

**COMMITTEE AMENDMENT FORM**

DATE 11/15/00

COMMITTEE CD/HR

PAGE #(S) \_\_\_\_\_

ORDINANCE # \_\_\_\_\_

SECTION(S) \_\_\_\_\_

RESOLUTION # 00-R-0973

PARAGRAPH \_\_\_\_\_

**AMENDMENTS:**

To insert a new Section 2 and re-number the old Sections 2 and 3 to Sections 3 and 4. The new Section 2 shall read:

**"Section 2. Said agreement shall be in substantially the form attached hereto as Exhibit A."**

586-  
7390

EXHIBIT AFIRST AMENDMENT OF AMENDED AND RESTATED  
COMMERCIAL FACILITIES SUBLEASE

THIS FIRST AMENDMENT OF AMENDED AND RESTATED COMMERCIAL FACILITIES SUBLEASE (the "First Amendment"), made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by and among the DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA, GEORGIA, a public body corporate and politic, duly created and organized pursuant to the Downtown Development Authorities Law (1981 Ga. Laws 1744, codified at O.C.G.A. §36-42-41 *et seq.*) (the "DDA"), the CITY OF ATLANTA, GEORGIA, a municipal corporation and political subdivision of the State of Georgia (the "City"), and CV UNDERGROUND, LLC, a limited liability company, duly organized and existing under Georgia law (the "Sublessee").

## WITNESSETH:

WHEREAS, the parties hereto entered into that certain Amended and Restated Commercial Facilities Sublease dated as of April 5, 1999 with respect to the lease and sublease to Sublessee of certain property generally known as Underground Atlanta (the "Sublease");

WHEREAS, Lofts at Underground, LLC ("Developer") has proposed to develop and construct a condominium project (the "Condominium Project") in a portion of the air rights above Upper Alabama Street with certain supports and easements with respect thereto to be located within Underground Atlanta;

WHEREAS, a related aspect of the Condominium Project may be the enclosure of a portion of Upper Alabama Street into an air conditioned shopping and entertainment area to be incorporated

into, and used as a portion of Underground Atlanta, and the construction of certain related infrastructure improvements in Underground Atlanta;

WHEREAS, the DDA, in order to facilitate the construction of the Condominium Project and the above-described enhancements of Underground Atlanta, all of which will be to the direct benefit of the City, has petitioned the City to abandon a portion of Upper Alabama Street and to convey such abandoned property to the DDA;

WHEREAS, the City has approved such abandonment and, subject to the satisfaction of certain conditions, the conveyance of such abandoned property to the DDA pursuant to the terms of an Ordinance dated as of \_\_\_\_\_, 2000;

WHEREAS, the DDA, Sublessee, and the Developer, have entered into that certain Master Development Agreement (Lofts at Underground), dated as of \_\_\_\_\_, 2000 (the "Development Agreement") to provide for the construction of the Condominium Project and the above-described enhancements to Underground Atlanta;

WHEREAS, the parties hereto desire to cause that portion of the abandoned property (including certain airspace above Upper Alabama Street) that may be enclosed into an air conditioned shopping and entertainment area and used as part of Underground Atlanta, as such property and air space are described on Exhibit "A" attached hereto and incorporated herein (such property being referred to as the "Upper Alabama Underground Premises"). is to be leased to Sublessee as hereinafter set forth;

WHEREAS, because the role of the DDA has been to facilitate the transactions hereinabove described in order to (i) advance the goals of the City to cause the development of downtown housing and mixed uses of property near transit, (ii) provide for the enhancement of Underground

Atlanta and (iii) maximize the financial returns to the City, as sublessor under the Sublease, the DDA desires to appoint the City as the agent and attorney-in-fact of the DDA to administer, monitor, implement and enforce the rights of the DDA and perform the duties of the DDA as lessor of the Upper Alabama Underground Premises as hereinafter set forth;

NOW, THEREFORE, for and in consideration of the foregoing premises, the sum of TEN AND NO/HUNDRED DOLLARS (\$10.00), and the agreements of the parties set forth herein, the parties hereto do hereby agree as follows:

Section 1. Defined Terms. Capitalized terms used in this First Amendment and not otherwise defined herein shall have the meanings given to such terms in the Sublease.

Section 2. Lease of Upper Alabama Underground Premises. DDA hereby demises and leases unto Sublessee, and Sublessee hereby takes from the DDA, the Upper Alabama Underground Premises pursuant to the same terms and provisions of the Sublease as apply to the lease and sublease of the Subleased Property and Commercial Facilities by the City to the Sublessee, except as those terms and provisions are otherwise amended as set forth in this First Amendment. The parties hereto agree that the Upper Alabama Underground Premises shall be deemed to be Subleased Property and Commercial Facilities under the Sublease, and the Sublessee shall have the same rights and duties with respect to the lease of the Upper Alabama Underground Premises as Sublessee has under the Sublease with respect to the lease and sublease of the Subleased Property and the Commercial Facilities and the DDA shall have the same rights and duties with respect to the lease of the Upper Alabama Underground Premises as the City has under the Sublease as the lessor of the Subleased Property with respect to the lease and sublease of the Subleased Property and the Commercial Facilities, except as otherwise set forth in this First Amendment.

Section 3. Lease Term. The term of the lease of the Upper Alabama Underground Premises Property shall commence on the date of this First Amendment and shall terminate at 12:00 Midnight on December 31, 2048, unless the Sublease is sooner terminated as provided in the Sublease as amended hereby.

Section 4. No Warranty of Title. Notwithstanding any provision of the Sublease to the contrary, neither the DDA nor the City makes any warranty or representation regarding title to the Upper Alabama Underground Premises.

Section 5. Rent. Rent payable with respect to the Upper Alabama Underground Premises shall be an annual amount equal to the amount of Additional Rent that may become payable by reason of the inclusion of the Upper Alabama Underground Premises within the Subleased Property and the Commercial Facilities and the resulting inclusion of the financial results of operations of the Upper Alabama Underground Premises in Cash Flow. The DDA hereby expressly and irrevocably directs Sublessee, and Sublessee hereby agrees, to pay all Rent with respect to the Upper Alabama Underground Premises to the City in accordance with the terms and provisions of the Sublease. The DDA acknowledges and agrees that any such payments by Sublessee shall be deemed payments of Rent with respect to the Upper Alabama Underground Premises. The DDA shall enter into such separate agreements with the City with respect to an accounting for such Rent as it may deem necessary. Failure of the Sublessee to pay Rent with respect to Upper Alabama Underground Premises shall have the same effect (including, without limitation, the occurrence of any Default or Event of Default) as the failure to pay Rent with respect to any other part of the Subleased Property.

Section 6. Construction in Upper Alabama Underground Premises. Notwithstanding any provisions of the Sublease to the contrary, the City and the DDA acknowledge and agree that

construction may take place on, in and about the Upper Alabama Underground Premises and other portions of Underground Atlanta in accordance with the terms of the Development Agreement, and that such construction activity, whether performed by or on behalf of the Developer, Sublessee or any other Person, shall not constitute a breach or violation of Section 7.05 of the Sublease. The conduct of such construction shall be governed exclusively by the Development Agreement; Exhibit J to the Sublease shall not be applicable thereto.

Section 7. Parking.

(a) The City, DDA and Sublessee acknowledge and agree that the terms and provisions of the Sublease with respect to the Parking Facilities are hereby amended to provide that the City may execute such licenses, contracts and other documents including, without limitation, deeds, leases, easements or licenses, as may be necessary in order to provide for the use of up to 300 Parking Spaces in the Parking Facilities for the use and benefit (on a twenty-four hours per day and a seven days per week basis) of owners (and their families, guests and invitees) of the fee simple residences to be constructed in connection with the Condominium Project. Such documents shall further provide that the use of such Parking Spaces by such owners of such fee simple residences shall be for such monthly parking rates as are generally prevailing in the surrounding area and shall further provide that the use of such Parking Spaces by such owners (and their families, guests and invitees) of such fee simple residences shall be on a non-exclusive basis. The term of such documents shall be for so long as the Parking Facilities are operated as parking facilities, but in no event shall the term exceed fifty years with a right of renewal not to exceed fifty years, as authorized by applicable Georgia law. Performance of the terms and provisions of this Section 7(a) shall not

constitute a breach or default under the Sublease by the City in respect of the obligations of the City to maintain certain Parking Spaces available to the Project.

(b) In furtherance of the obligation of the City under the Sublease to maintain and operate the Parking Facilities, the City agrees to use its best efforts to cause the Parking Facilities to be operated and managed in accordance with the following requirements (the City may cause its Manager of the Parking Facilities to perform the following requirements, but the City shall be responsible for satisfying the following requirements):

(i) Operate and maintain the Parking Facilities in a first class manner, consistent with the operation of other parking garage facilities appurtenant to first class residential projects in Atlanta, Georgia and at a level consistent with a high quality urban retail specialty project.

(ii) Operate, employ and staff the Parking Facilities 24 hours per day, 7 days per week, 365 days per year with such competent personnel as may be required to continuously operate the Parking Facilities in a first class manner consistent with the operation of other parking garage facilities appurtenant to first class residential projects in Atlanta, Georgia, and at a level consistent with a high quality urban retail specialty project, including, but not limited to, the employment of an on-site manager at the Parking Facilities with full authority and responsibility to manage, operate and maintain the Parking Facilities and handle emergencies occurring therein.

(iii) Purchase all necessary supplies and operating equipment as needed for the operation of the Parking Facilities.

(iv) Attend to the maintenance and repair of all automatic parking equipment, signage and lighting fixtures (including bulb replacement), and provide all other customary repair and

maintenance necessary in connection with the operation of the Parking Facilities in the ordinary course of business.

(v) Assure the maintenance of the Parking Facilities, employee washrooms, elevators, elevator lobbies, parking management offices, and other areas of the Parking Facilities for the visitors, guests, customers and patrons in a clean, neat and attractive condition.

(vi) Operate the Parking Facilities in compliance with all applicable state, federal, and municipal laws, rules and ordinances.

(vii) Provide or perform daily maintenance and custodial and housekeeping services for the Parking Facilities including, but not limited to, the removal of paper, debris and litter, bottles, cans and broken glass, clean up of spills and other liquid matter or waste, and emptying of trash receptacles as needed.

(viii) Inspect daily all floors, walls, doors, equipment, cabinets and enclosures, windows, stairs, landings, railings, elevators and other areas in the Parking Facilities subject to dirt and soil accumulation and clean as necessary using recommended detergents and commercial cleaning agents customarily used for this purpose. Surfaces in the Parking Facilities requiring washing, polishing, or oil application are to be treated no less than monthly or as frequently as needed to preserve a clean and well-maintained appearance.

(ix) Power sweep or mechanically scrub the entire floor area of the Parking Facilities on a monthly basis to maintain a clean, well-maintained facility.

(x) Enter into and pay for all maintenance contracts on the parking equipment including, but not limited to: automatic gate arms, ticket dispensers, fee computer, automatic doors, overhead

grills and other equipment of the Parking Facilities. Pay for and maintain contracts for elevator maintenance and life safety/security systems.

(xi) Promptly and efficiently process all parking patrons into and out of the Parking Facilities. Make every effort to avoid the queuing of automobiles at any entrance or exit.

(xii) Remove or cause to be removed any graffiti or other unauthorized display or sign which may appear anywhere within or on any portion of the Parking Facilities.

(xiii) Act in a prudent fashion with careful attention to on-site security and provide not less than \_\_\_\_ (or such other number as may be hereafter mutually agreeable with the City, Sublessee and Developer (or any condominium association to which the rights of Developer hereunder may hereafter be assigned) security personnel to patrol the Parking Facilities on a 24 hours per day, 7 days per week, 365 days per year basis.

(xiv) Cooperate with the security personnel of Sublessee shall include permitting Sublessee to place, at its expense, security cameras and other equipment in the Parking Facilities, which cameras and other equipment will be maintained and operated at the cost and expense of Sublessee.

(xv) Install additional lighting in the Parking Facilities at such locations as Sublessee shall reasonably require.

If the City fails to perform any of the above obligations with respect to the Parking Facilities, Sublessee may give the City written notice of such failure of performance and if such failure is not remedied within fifteen (15) days of the receipt of such notice, then Sublessee may remedy or cause to be remedied such failure. If Sublessee remedies or causes to be remedied such failure, then the costs and expenses incurred in remedying or causing to be remedied such failure may be offset against Rent due to the City.

Section 8. Rights of Project Tenants. The DDA acknowledges and agrees that it shall abide by the provisions of Section 9.03 of the Sublease with respect to the Upper Alabama Underground Premises and any Project Tenant Agreements with respect thereto. The provisions of this Section 8 shall be subject to the provisions of Section 9.04 of the Sublease.

Section 9. Appointment of City as Agent for DDA. The DDA hereby constitutes and appoints the City as the agent and attorney-in-fact of the DDA for all purposes of administering, monitoring, implementing and enforcing all rights and remedies (including, without limitation, the execution and delivery of any documents or consents or approvals) of the DDA in respect of the lease of the Upper Alabama Underground Premises, as herein provided, and also for all purposes of performing all duties and obligations (including, without limitation, the execution and delivery of any documents or consents or approvals) of the DDA in respect of the lease of the Upper Alabama Underground Premises as herein provided and all the acts and doings of said agent and attorney-in-fact are hereby ratified and confirmed by the DDA. Without intending to limit the generality of the foregoing, the DDA expressly acknowledges and agrees that the City may exercise any and all rights and remedies available under the Sublease upon the occurrence of any Default or Event of Default with respect to the Upper Alabama Underground Premises with the same force and effect as such rights and remedies may be exercised with respect to any other Subleased Property and that such actions may be taken by the City without any further consent by the DDA. Sublessee acknowledges and agrees to the provisions hereof and agrees that actions by the City upon the occurrence of any Default or Event of Default with respect to the Upper Alabama Underground Premises shall have the same effect as such actions may have with respect to any other Subleased Property. Sublessee may rely exclusively on any action taken by the City with respect to the Upper Alabama

Underground Premises without the necessity of determining whether the DDA approves of such action. The City and the DDA shall be jointly responsible for the performance of the obligations of the DDA as lessor of the Upper Alabama Underground Premises pursuant to the terms of the Sublease.

Section 10. Acknowledgment and Agreement of City and Sublessee. The City accepts the appointment of the DDA as described in Section 9 hereof. The Sublessee acknowledges the appointment of the City as agent and attorney-in-fact as described in Section 9 hereof and agrees to recognize the rights and powers of the City as such agent and attorney-in-fact and to perform all duties and obligations of Sublessee in respect of the Upper Alabama Underground Premises in accordance with the terms of the Sublease except as otherwise set forth in this First Amendment.

Section 11. Option of City to Acquire Property. The DDA hereby grants to the City an option to purchase the Upper Alabama Underground Premises upon satisfaction by the City of all its obligations to provide for the payment of the Bonds set forth in the trust indenture securing the Bonds or any related documents defined in any such trust indenture securing any such Bonds. The DDA agrees that upon satisfaction of such conditions, the City shall have the right to purchase the Upper Alabama Underground Premises for a purchase price equal to \$100.00 in cash to be paid by the City to the DDA. The City hereby acknowledges and agrees that such right of purchase is subject and subordinate to the rights of Sublessee under the Sublease and this First Amendment. Such right of the City to purchase the Upper Alabama Underground Premises may be exercised by the City upon satisfaction of the conditions hereinabove set forth by written demand of the City to the DDA. Upon receipt of such demand, the DDA shall execute such deeds and other documents necessary to convey the Upper Alabama Underground Premises to the City. The City and the DDA hereby

acknowledge and agree that if the City shall exercise the purchase option herein granted by the DDA, Sublessee shall continue to enjoy all rights under the Sublease in accordance with the terms and provisions of the Sublease and this First Amendment.

Section 12. Effect of Amendment. This First Amendment shall amend the Sublease as herein set forth and, except as hereby amended or otherwise modified, the Sublease shall continue in full force and effect in accordance with its terms.

Section 13. Governing Law. This First Amendment shall be governed, construed, performed and enforced in accordance with the laws of the State of Georgia.

Section 14. Miscellaneous. In no event shall any portion of the Condominium Project or any improvements located above the Upper Alabama Underground Premises constitute a portion of the Premises leased and subleased pursuant to the Sublease, nor shall any financial results of operations thereof be included in Cash Flow. This First Amendment is contingent upon the construction by Developer of improvements in the Upper Alabama Underground Premises by \_\_\_\_\_, 200\_\_. In the event that such construction is not commenced by such date, then this First Amendment shall be of no further force nor effect.

My Commission Expires:

\_\_\_\_\_  
[NOTARY SEAL]

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

RECOMMENDED:

\_\_\_\_\_  
Chief Operating Officer

RECOMMENDED:

\_\_\_\_\_  
Chief Financial Officer

SUBLESSEE:

CV UNDERGROUND, LLC, a Georgia limited liability  
company

By: O'Leary, Inc., its sole manager

By: \_\_\_\_\_  
Daniel E. O'Leary, President

ATTEST: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signed, sealed and delivered  
this \_\_\_\_ day of \_\_\_\_\_  
2000 in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

My Commission Expires:

[CORPORATE SEAL]

\_\_\_\_\_  
[NOTARY SEAL]

JOINDER

Underground Festival, Inc. is executing this First Amendment solely for the purpose to acknowledge and agree that to the extent, if any, that the consent of Underground Festival, Inc. may be needed to amend the Sublease, such consent to this First Amendment is hereby given and to agree that such consent shall no longer be required with respect to any other amendment of the Sublease.

Signed, sealed and delivered this \_\_\_\_ day of \_\_\_\_\_, 2000 in the presence of:

UNDERGROUND FESTIVAL, INC., a Georgia corporation

\_\_\_\_\_  
Unofficial Witness

By: \_\_\_\_\_  
Charles H. Battle, Jr., President

\_\_\_\_\_  
Notary Public

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
[NOTARY SEAL]

Minutes of  
Neighborhood Planning Unit W  
26 September 2000

The meeting was called to order by Chair Paul Zucca at 7:35 p.m.

**Chair's Remarks**

Atlanta in DeKalb residents: a refund of a portion of city taxes has been approved. Residents will receive a form in the mail to initiate the refund.

2001 NPU Elections: the elections will again be held 30 minutes before the neighborhood association meetings in November (EACA, GPNA and SAND). These elections will be announced at neighborhood association meetings in October 2000.

In Grant Park: Zoning Committee approved a playground area next to the Grant Park Cooperative Preschool; the Superior Rigging site is in the process of being developed.

The Georgia DOT is installing a sidewalk at Oakland Cemetery.

**Mayor's Office**

Ms. Marsha Brinkley, Mayor's Office of Community Affairs, was present but had no formal presentation.

**Commissioner Nancy Boxill, Fulton County District 6**

Mr. Steve Brinkley distributed copies of The Commissioner's Desk and announcements of 2001 District 6 budget public hearings.

**Atlanta Police Department**

Major Donovan, Zone 3, announced that most of the minimotor patrols have been out of the Zone for most of September. Roadblocks and radar are out in force again. October, November and December usually show major increases in crime. Goal: clean up vagrants living along Memorial and MLK Drive corridors. The Major introduced Lt. Dunlap, Zone 3's evening watch commander (3 p.m. to 11 p.m.).

Major Banda, Zone 6, announced that there are still problems in East Atlanta with car break-ins and burglaries. Five people have been arrested for car break-ins. Two shootings occurred in August in connection with car break-ins.

**Zoo Atlanta**

Ms. Denise Wingate announced a new birthday party pavilion that has opened in the Children's Zoo. Live panda feeds are available on the Zoo Atlanta website. The former Taco Mac on Cherokee Avenue will be demolished for a new Zoo Atlanta facility.

**CDBG Application**

Transition House 2, 539 Robinson Avenue (Mr. Crutchfield), a proposed acquisition of a single family house for use as a substance recovery facility with a maximum of 5 adults. Discussion: job availability in the area for the residents of the facility, reaction of immediately-impacted neighbors, no vote taken at Grant Park Neighborhood Association, a growing concentration of social service